

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
HELIOS & MATHESON NORTH AMERICA, INC.,
f/k/a The A Consulting Team, Inc.,

Plaintiff,

-against-

VEGASOFT OY, a Finnish Corporation.,

Defendant.
-----X

STATE OF NEW JERSEY)
COUNTY OF UNION)ss.:

Crotty, J.
CIV. NO.: 07CV3600
ECF
AFFIDAVIT OF
FELICIA McCASKILL

FELICIA McCASKILL, being duly sworn, deposes and says:

1. I am the Contract Manager of HELIOS & MATHESON NORTH AMERICA, INC. ("HELIOS"), f/k/a The A Consulting Team, Inc. ("TACT"), a domestic corporation, and am fully familiar with the facts and circumstances herein. I give this affidavit in support of the within motion for a temporary restraining order pursuant to F.R.C.P. Sec. 65(b) and a preliminary injunction pursuant to F.R.C.P. Sec. 65(a), directing the Defendant, VEGASOFT OY ("VEGASOFT"), a corporation incorporated under the laws of Finland, to provide passwords for the renewal of certain software licenses under a written Distributor Agreement ("Agreement") between TACT and VEGASOFT, dated September 18, 2002. Said Agreement permits HELIOS to license to Clients Vega software under a standard Software License Agreement that was drawn by VEGASOFT.

2. In my position as Contract Manager I am in day-to-day contact with Clients of

HELIOS with respect to the Vegasoft product which is the subject of the Agreement. Clients contact me at least a month in advance of their renewal dates to receive the password to be able to renew the software license as per the individual Software License Agreements. The software in issue is utilized on the Client's mainframe computer. As can be seen below, VEGASOFT now is contacting existing Clients with whom HELIOS has license agreements and advising them of HELIOS' termination to induce the Client to contract directly with VEGASOFT. Upon information and belief, all Clients have been contacted by VEGASOFT.

3. Recently, I have received numerous communications from Clients as to the status of HELIOS' Software License Agreements with them. These communications are as a result of VEGASOFT'S direct contact with HELIOS' Clients informing the Client that HELIOS' distributorship has been terminated and that they (the Client) should deal directly with VEGASOFT. Attached as Exhibit 1 is a copy of an e-mail forwarded to me on May 11, 2007 by our Client, American President Lines. VEGASOFT has informed our Client that a new license agreement is needed with them to continue the use of the software. However, HELIOS has a contract with American President Lines to continue support and to renew the existing software license.

4. On May 15, 2007 I received an e-mail from General Electric (one of our Clients) advising that they received a phone call from someone at VEGASOFT stating that "TACT was not (could not) provide our maintenance support for our software licenses that we've had with TACT for some number of years". Copy of e-mail annexed as Exhibit 2. Also, I have received communication from our Client, Miami-Dade County, that VEGASOFT has contacted them

directly and given them a renewal quote.

5. Eight Clients have Software License Agreements coming up for renewal in June, 2007 and are requesting passwords in order to be able to continue to utilize the software. These Clients are American President Lines (2 licenses), DHL Air & Ocean, GE Corporate (2 licenses), GE Plastics (4 licenses), Humana (2 licenses), National Broadcasting Company (6 licenses), State of Iowa, Dept. of Transportation (3 licenses) and Visteon Corporation (2 licenses). HELIOS will not be able to enter into an annual renewal as required by the Software License Agreement without the appropriate password generator from VEGASOFT.

Additionally, the following Clients who utilize Vega software under license from Helios are client's of HELIOS for other products: American President Lines, CGI, Consumers Energy, DHL, DST Systems, GE Corp., Humana, State of Iowa and Unum Provident Corp. If the requested relief is not granted and HELIOS is not able to renew their Software License Agreements there is potential to harm HELIOS' overall business relationship with these Clients. This is especially so since the Software License Agreement mandated by VEGASOFT requires HELIOS to renew the license on an annual basis.

6. It is obvious that VEGASOFT's intent is to cut off HELIOS and obtain the total renewal fees for itself. This should not be countenanced given the language of the Agreement and the fact that HELIOS successfully has developed the market for the software over a 16 year period. To allow the effective termination of the Agreement as to existing Clients is contrary to the intent of the parties as well as causing HELIOS irreparable injury.

Moreover, the loss of the renewal revenue will severely impact HELIOS as it is a

significant portion of HELIOS' software business aggregating approximately \$340,000.00 in yearly revenue.

7. No prior application for the relief requested herein has been made previously.

WHEREFORE, it is respectfully submitted that the within motion for a preliminary injunction requiring and directing that VEGASOFT OY provide the password for renewal of existing software licenses of Vega software during the pendency of this action and for a temporary restraining order requiring and directing VEGASOFT OY to provide the password for renewal of existing software licenses of Vega software until this motion can be heard be granted in its entirety together with such other and further relief as may be just and proper.


FELICIA McCASKILL

Sworn to before me on the
15th day of May, 2007.


Notary Public

JEAN LOVASTIK
NOTARY PUBLIC
STATE OF NEW JERSEY
COMM. ID 2317736
MY COMMISSION EXPIRES AUG. 3, 2009

Stephen Gersowitz

From: Felicia McCaskill [FMcCaskill@hmna.com]
Sent: Friday, May 11, 2007 2:13 PM
To: Stephen Gersowitz; Shmuel Bentov
Subject: FW: Vegasoft renewal / APL
Importance: High

AS so it begins!

Felicia McCaskill
Manager Client Relations & Contracts
fmccaskill@tact.com | Ph 732.499.8228, ext. 2606 | Fax 732.499.9310 | Cell 732.742.0614

TACT Software - (A division of The A Consulting Team, Inc.)
77 Brant Avenue, Suite 320
Clark, NJ 07066

For Client Services, Contracts or Password Issues:
fmccaskill@tact.com

For Technical Support:
support@tact.com

From: Slape, Darcia [mailto:Darcia_Slape@apl.com]
Sent: Friday, May 11, 2007 2:09 PM
To: Felicia McCaskill
Subject: FW: Vegasoft renewal / APL
Importance: High

From: Brickley, Roy A
Sent: Friday, May 11, 2007 7:43 AM
To: Lai, Tommy K; Slape, Darcia; Merlin, Sam; Youll, Steven M; Prembabu, T T; Alice, Richard J; Carlson, Micky
Cc: Kumar, Pradeep
Subject: FW: Vegasoft renewal / APL
Importance: High

Sam, Tommy,

Since this is a mainframe product, this information may need to be handled by EDS. Please be aware of this license change for VegaSoft (formerly part of TACT).

Thanks,

Roy

From: Sales [mailto:Sales@vegasoft.com]
Sent: Friday, May 11, 2007 12:29 AM
To: David Brenner ; Brickley, Roy A

5/11/2007

EXHIBIT 1

Cc: Matti Karjalainen

Subject: Vegasoft renewal / APL

Hi David and Roy,

As you might already know Vegasoft the Distributor Agreement between Vegasoft and Helios & Matheson North America (HMNA a.k.a TACT) is now terminated.

Please be advised that in order to get product keys, support and upgrades after the ongoing maintenance period a new license agreement with Vegasoft is needed.

According to our records the next renewal period in your company starts shortly on June 30th. Please let us know the name and e-mail address of the person handling license agreements and ask him or her to contact sales@vegasoft.com. We do our utmost for the uninterrupted continuation of the usage of VEGA in APL.

We apologize for any inconvenience and thank you for your help.

Vegasoft support team.

***Disclaimer:** This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message. You are hereby also notified that any disclosure, copying, or distribution of this message, or the taking of any action based on it, is strictly prohibited and may harm the interests of the sender.

5/11/2007

Stephen Gersowitz

From: Felicia McCaskill [FMcCaskill@hmna.com]
Sent: Tuesday, May 15, 2007 10:57 AM
To: Stephen Gersowitz
Cc: Shmuel Bentov
Subject: FW: Maintenance - CRITICAL

Importance: High

Another email in regards to Vega contacting the client.

Felicia McCaskill
Manager Client Relations & Contracts
fmccaskill@tact.com | Ph 732.499.8228, ext. 2606 | Fax 732.499.9310 | Cell 732.742.0614

TACT Software - (A division of The A Consulting Team, Inc.)
77 Brant Avenue, Suite 320
Clark, NJ 07066

For Client Services, Contracts or Password Issues: fmccaskill@tact.com

For Technical Support:
support@tact.com

-----Original Message-----

From: Wade, Dayna (GE, Corporate) [mailto:Dayna.Wade@ge.com]
Sent: Tuesday, May 15, 2007 10:51 AM
To: Software
Cc: David Kane; Fekete, Gayle (GE, Corporate, non-ge)
Subject: Maintenance - CRITICAL
Importance: High

I just had an email and a phone call from a gentleman at Vega Software and he said that TACT was not (could not) provide our maintenance support for our software licenses that we've had with TACT for some number of years. Can someone either call me or let me know what is happening please ?

Thank you,
Dayna Wade
GE GIS Sourcing Mainframe Leader
8700 Governor's Hill Dr. Cinti, OH 45249
513.583.3546 office / 583-3606 fax / 8*330-3546 dialcom
513.325.8082 / mobile

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EXHIBIT 2